

## **REMARKS**

These remarks are in response to the Office Action mailed June 8, 2009. Claims 3 and 32 have been cancelled without prejudice to Applicants' right to prosecute the cancelled subject matter in any divisional, continuation, continuation-in-part or other application. Claims 1, 4, 5, 6, 7, 13, and 26 have been amended. Support for the amendments can be found in the claims and specification as originally filed (see, e.g., claim 3 and 32). No new matter is believed to have been introduced.

### **I. OBJECTIONS TO THE CLAIMS**

Claims 5 and 32 are objected to for a typographical error related to "lipoteichoic acid". Applicants have amended claim 5. The objection is moot with respect to claim 32.

### **II. REJECTION UNDER 35 U.S.C. §102(b)**

Claims 1, 2, 6-8, 13, 14, 26 and 27 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by WO 92/10203 as is evidenced by Shaw et al. (J. Clinical Invest., 105:1731-1740). Claims 3, 4, 5, 9, 10, 11, 12, 18, 29, 30, 31 and 32 are not indicated as anticipated. Applicants respectfully traverse this rejection.

The '203 application does not teach or suggest an immunogenic preparation from Streptococcus as set forth in Claims 1, 6, and 13. Thus, claims 1, 6 and 13 is novel over the '203 application and any claim depending therefrom (e.g., 2, 4-5, 7-8, and 14) is also novel. Accordingly, the rejection of claims 1-2, 6-8 and 13-14 may be withdrawn.

The '203 application does not teach or suggest lipoteichoic acid as set forth in Claim 26, upon which claims 27, 28, 29, 30 and 31 depend. Accordingly, the rejection of claims 26-27 may be withdrawn.

It is further noted that in contrast to the Office Action's statement regarding the novelty of compositions and use of such compositions in methods of use/treatment, that methods of using an old composition for a new use are in fact well recognized as being patentable. Furthermore, the pending claims do not include a 'product-by-process' claim element as suggested by the Office Action.

Rather the claims set forth that the preparation used for immunization is a obtained from a pathogen such as Streptococcus.

For at least the foregoing reasons, Applicants submit that the rejection may be properly withdrawn.

Claims 1, 2, 6-8, 13, 14, 26 and 27 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 5,455,032. Claims 3, 4, 5, 9, 10, 11, 12, 18, 29, 30, 31 and 32 are not indicated as anticipated. Applicants respectfully traverse this rejection.

The '032 application does not teach or suggest an immunogenic preparation from Streptococcus as set forth in Claims 1, 6, and 13. Thus, claim 1, 6 and 13 is novel over the '032 application and any claim depending therefrom (e.g., 2, 4-5, 7-8, and 14) is also novel. Accordingly, the rejection of claims 1-2, 6-8 and 13-14 may be withdrawn.

The '032 application does not teach or suggest lipoteichoic acid as set forth in Claim 26, upon which claims 27, 28, 29, 30 and 31 depend. Accordingly, the rejection of claims 26-27 may be withdrawn.

### **III. REJECTION UNDER 35 U.S.C. §103**

Claims 1-14 and 26-32 stand rejected under 35 U.S.C. §103 as allegedly being unpatentable over WO 92/10203 in view of U.S. Patent No. 5,455,032 and Shaw et al. Applicants respectfully traverse this rejection.

Applicants respectfully submit that the '203 application does not teach or suggest immunizing with a preparation from Streptococcus to prevent atherogenesis. When the '203 is combined with the '032 patent the combination still fails to teach or suggest immunizing a subject with a Streptococcus preparation for preventing or treating atherogenesis. Furthermore, and in contrast to the Office Action, the '032 patent does not teach or suggest lipoteichoic acid (e.g., a search of the word "lipoteichoic acid" in the '032 patent yields no results). Thus, it would not be possible for one to arrive at the claimed invention as suggested by the Office Action at page 6, last paragraph, because (a) there is not teaching or suggestion to administer a

preparation from a Streptococcus to treat atherogenesis and (b) because there is no mention of lipoteichoic acid in either the '203 application or '032 patent.

The addition of Shaw et al. to the '203 application also do not teach or suggest using a Streptococcus preparation to treat or prevent atherogenesis. The Examiner is reminded that for a prima facie case of obviousness (even under the lower standards of KSR), the references when combined must teach all the elements of Applicants' claimed invention and must provide some expectation of success. Applicants submit that because of the complexity of biological systems there is no expectation that because natural antibodies are present that react with PC and pneumococcal infections that a Streptococcal preparation would provide a method of treating or preventing atherogenesis. Applicants submit that only in hindsight (upon showing the effectiveness of the present claimed invention) could one of skill in the art have arrived at the reasoning for the present obviousness rejection.

For at least the foregoing reasons, Applicants respectfully submit that the claimed invention is non-obvious.

The Director is authorized to charge any required fee or credit any overpayment to Deposit Account Number 50-4586, please reference the attorney docket number above.

The Examiner is invited to contact the undersigned at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,

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